



California Environmental Protection Agency (Cal/EPA)

Advisory Committee on Environmental Justice

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Management District,
Diamond Bar, CA

July 11, 2003

Dear Interested Parties:

The California Environmental Protection Agency (Cal/EPA) Advisory Committee on Environmental Justice is excited to announce the release of its ***Draft Recommendations to the Interagency Working Group on Environmental Justice*** document for public review. The Recommendations document is a report prepared by the Advisory Committee that covers specific areas in regards to Cal/EPA's legislative mandate. The Report is intended to provide a set of comprehensive recommendations to establish and implement an effective environmental justice program at Cal/EPA. The Committee has drafted the set of recommendations outlined in this Draft Report in the spirit of consensus and has reached consensus on many of the recommendations. Section VIII of the Draft Report offers draft alternative opinions from committee members on issues where the Committee has not reached consensus.

The Committee encourages your input during this public comment period. The public comment period will end on Friday, **September 12, 2003**. Written public comment must be postmarked by **September 12, 2003**.

WRITTEN PUBLIC COMMENTS CAN BE MAILED, FAXED OR E-MAILED TO:

Cal/EPA – EJ Program
1001 I Street, 25th Floor
Sacramento, California 95814

Fax: (916) 445-6401

E-mail: envjustice@calepa.ca.gov

Copies of the Report are available on the Cal/EPA EJ Website on Tuesday, July 15, 2003:

www.calepa.ca.gov/envjustice

Written comments will be accepted after this deadline, however the public cannot be assured that Committee members will have an opportunity to review them prior to the Advisory Committee meeting on September 29-30, 2003. Per the description below, members of the public are encouraged to attend and provide oral comments at the Advisory Committee meeting on September 29-30, 2003, in Oakland, California (location provided at the end of this letter).

Established in December 2001, the Advisory Committee on Environmental Justice is a 17-member Cal/EPA advisory committee that provides information, formulates recommendations and provides advice on environmental justice policy and direction for

Cal/EPA. The EJ Advisory Committee provides a forum for public discussion and development of independent advice and consultation to the Secretary of Cal/EPA and the Interagency Working Group on Environmental Justice utilizing the perspectives, strengths and responsibilities of environmental justice organizations, business and industry, local government, environmental advocacy organizations, community groups, air districts, certified unified program agencies, involved in environmental justice issues. The Committee provides information, advice and recommendations to the Secretary of Cal/EPA and the Interagency Working Group on Environmental Justice that will help influence the content, direction and implementation of environmental justice programs and initiatives at Cal/EPA.

Since May 2002, the Advisory Committee has been engaged in numerous meetings and forums aimed at gathering public comments and insights to assist the Committee as it framed its discussions, issues and recommendations. To date, the Advisory Committee has held nine (9) meetings, and five (5) public workshops throughout the state as they developed this draft report. The Advisory Committee is firmly committed to meaningful and robust public involvement, and it is the Committee's hope that the recommendations outlined in this draft report fully captures the ideas of the public concerning the development of an effective environmental justice program to benefit all communities in California.

Upon the close of the Public Comment period on **September 12, 2003**, the Advisory Committee will review all comments received, and hopes to finalize the report at its September 29-30, 2003, meeting in Oakland, California. This meeting will be held at State Building 1515 Clay Street, Room 1, Oakland, California. The public is invited and encouraged to attend this meeting.

The Advisory Committee is eager to obtain your input and encourages everyone to participate in this landmark process for the State of California.

If you have any questions, please contact Mr. Romel Pascual, Assistant Secretary for Environmental Justice, Cal/EPA, at (916) 324-8425 or via email at rpascual@calepa.ca.gov.

Thank you.

Sincerely,

Detrich B. Allen

Detrich B. Allen
Committee Co-Chair

Diane Takvorian

Diane Takvorian
Committee Co-Chair

Barbara Lee

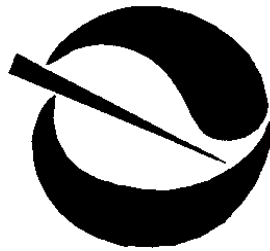
Barbara Lee
Drafting Subcommittee Co-Chair

Henry Clark

Henry Clark
Drafting Subcommittee Co-Chair

DRAFT

Recommendations of the California
Environmental Protection Agency (Cal/EPA)
Advisory Committee on Environmental Justice
to the
Cal/EPA Interagency Working Group on
Environmental Justice



July 2003

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* Committee Co-Chairs

** Drafting Subcommittee Co-Chairs

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Michael Dorsey, Department of Environmental Health – San Diego, CA
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Disclaimer

This report and/or recommendations was written as a part of the activities of the California Environmental Protection Agency Advisory Committee on Environmental Justice (EJ ADVISORY COMMITTEE), a public advisory committee providing information, advice, and recommendations to the Secretary of Cal/EPA, the Interagency Working Group on Environmental Justice, and other officials of Cal/EPA. The Committee is structured to provide balanced, expert assessment on matters related to the Environmental Justice program. This report and/or recommendations have not been reviewed for approval by Cal/EPA and, hence, the contents of this report and recommendations do not necessarily represent the views and policies of Cal/EPA, nor of any branch of state government, nor does mention of trade names or commercial products constitute a recommendation for use.

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Recommendations of the Cal/EPA Advisory Committee on Environmental Justice
to the
Cal/EPA Interagency Working Group on Environmental Justice

July 11, 2003

I. INTRODUCTION

This report has been prepared by the California Environmental Protection Agency's Advisory Committee on Environmental Justice (also referred to in this document as the 'EJ Advisory Committee,' 'Advisory Committee,' or 'Committee'). The report covers specific areas in response to legislative mandate. More importantly, this report reflects the collective judgment of the Committee about the steps needed to make environmental justice a reality for all Californians.

The EJ Advisory Committee fully supports the goal of environmental justice, as defined in state law, for all Californians. The Committee recognizes that this goal has not yet been reached. There are still gaps in data, and tools that need to be developed, but the Committee believes that there are also steps that can be taken now. This report outlines many things that can and should be done to achieve the goal of environmental justice. The Committee fully endorses the use of good science, and robust and meaningful participation by the public in environmental decision-making; at the same time we do not want our recommendations for developing data and tools to result in delays in implementing those steps that can clearly be taken right away. To that end, the Committee's report also includes timelines and next steps, and above all, accountability for implementing these recommendations.

The Environmental Justice movement is deeply rooted in civil rights, and the struggles of people who have historically been marginalized. In their fight to be treated fairly and accorded equal protection under all of our nation's laws, they have demanded equal protection of their health and environment. In particular, the Environmental Justice movement has been championed by people of color, Native American tribes, farm workers, and low-income communities. The movement has been characterized by passionate debate, and many different views; although this report does not completely set out the scope of these views, we must acknowledge their importance in shaping public policy. As background, a general history of the movement is provided. A more detailed summary is appended to the report, as is a list of additional references (*see Appendix A*). What this report does show, however, is that environmental justice is of great importance to the people of California and has become a fundamental goal for the state's environmental programs.

Environmental justice first gained national prominence through a protest against the proposed siting of a landfill for polychlorinated biphenyls (PCBs) in a predominately African-American county in North Carolina. The phrase "environmental racism" was used to refer to policies and activities that, either intentionally or unintentionally, resulted in the disproportionate exposure of

people of color to environmental hazards. A 1983 study published by the U.S. General Accounting Office (GAO) found that in the southeastern United States, three of four commercial hazardous waste landfills were in communities with more African-Americans than whites. The United Church of Christ Commission for Racial Justice expanded the 1983 GAO study to the national level and found similar results. A total of 45 studies conducted by various investigators between 1967 and 1993 examined the role of race and income level in exposure to environmental hazards, and found disparate impacts in the great majority of cases studied (87 percent and 74 percent, respectively) (*see Appendices A and B*).

In October 1991, advocates attending the First National People of Color Environmental Leadership Summit drafted a statement called “Principles of Environmental Justice.” These principles articulated broad goals for communities and environmental justice. They asserted that all people have a fundamental right to clean air, water, land, and food. They called for policy based on mutual respect, free from discrimination or bias. They affirmed communities’ right to self-determination, and to participate as partners in every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation. Finally, the principles expanded the concept of “environment” beyond ecological and natural systems, to include places where people live, work, play, and go to school.

In 1994, a newly inaugurated President Clinton issued Executive Order 12898: “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” The executive order requires that all federal agencies incorporate environmental justice into their missions. Specifically, federal agencies are required to address situations where their programs, policies, or activities result in adverse health or environmental impacts that are disproportionately high and adverse in low income communities or communities of color. (*see Appendix C*)

The order is binding on all federal agencies. Some of the specific steps agencies were directed to take include enhanced public participation in federal assessments of potential environmental impacts from proposed projects, and increased public access to environmental information, documents, and meetings. Agencies were also directed to analyze the effects of permitting decisions on low income communities and communities of color, and to apply the non-discrimination requirement of Title VI of the Civil Rights Act of 1964 to environmental decision-making.

There is an important aspect of environmental justice that has been more fully articulated, and more consistently implemented, at the federal level than in California. It involves environmental justice as it relates to Native American tribes. The federal government holds a “trust responsibility” with tribes that “requires the federal government consider the best interests of the tribes in its dealings with them and when taking actions that may affect them. The trust responsibility includes protection of the sovereignty of each tribal government” (*see Appendix D*). The federal government also has a consistent policy of conducting its relationships with tribes on a government-to-government basis. This has not always been the case in relationships between tribes and states, including the State of California. The central point of contention is the limited (or complete lack of) applicability of state law on tribal lands. As a result, there are a number of issues that further complicate environmental justice for Native American tribes in California. These issues include, but are not limited to, the need for clearer definition of and

limits on sovereignty, the impacts of the delegation of federal authority, cross-border impacts between tribal and non-tribal lands, differences between Tribal, federal and state standards and environmental programs, and the handling of socioeconomic impacts.

California law defines “Environmental Justice” to mean: “The fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies” (Government Code Section 65040.12).

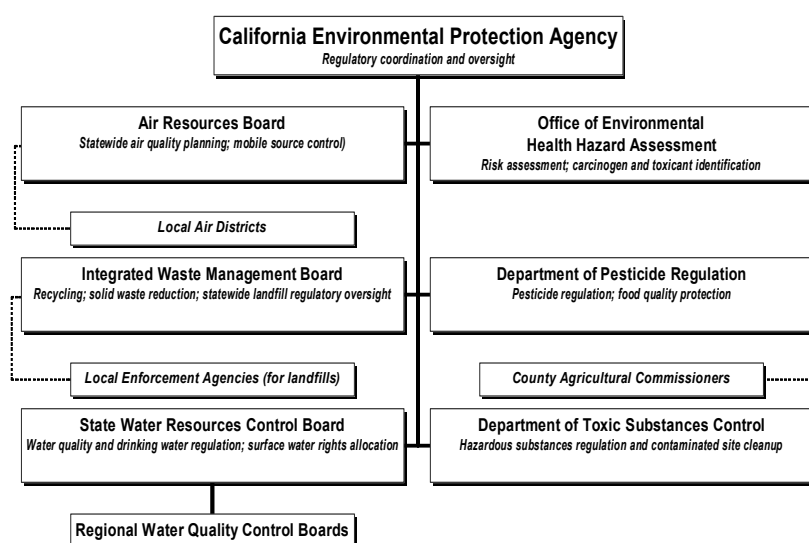
Environmental justice became part of California’s laws through legislation enacted between 1999 and 2001. The term “environmental justice” was formally defined when Governor Davis signed Senate Bill 115, authored by Senator Hilda Solis, in 1999. This bill designated the Governor’s Office of Planning and Research (OPR) as the agency charged with coordinating the state’s efforts for environmental justice programs. It also required the California Environmental Protection Agency (Cal/EPA) to take specific actions in designing its mission for programs, policies, and standards within the Agency. In 2000, Governor Davis included a specific appropriation to Cal/EPA for its environmental justice program, and also signed Senate Bill 89, authored by Senator Martha Escutia. Senate Bill 89 established a procedural framework for pursuing environmental justice, and created the Interagency Working Group on Environmental Justice, which includes the heads of Cal/EPAs Boards, Departments, and Office, and the Director of OPR. Senate Bill 89 also created the Advisory Committee on Environmental Justice, made up of external stakeholders, to assist the Working Group in developing a strategy to identify and address environmental justice gaps in Cal/EPA programs (additional details are provided in Section II, Legislative Mandate). Senate Bill 828 (Alarcon, 2001) established a deadline for the Cal/EPA Boards, Departments and Office to identify and address gaps in their programs that may impede the achievement of environmental justice. Finally, Assembly Bill 1553 (Keeley, 2001) required OPR to establish guidelines for incorporating environmental justice into the general plans adopted by cities and counties. Additional information about these bills, and the agencies that they affect is discussed in the next section of this report.

II. LEGISLATIVE MANDATE

In California, legislation on environmental justice has mandates focused on four entities: Cal/EPA, OPR, the Interagency Working Group on Environmental Justice, and the Cal/EPA Advisory Committee on Environmental Justice (EJ Advisory Committee). Cal/EPA is the umbrella agency that oversees all of the state’s environmental agencies, also known as its Boards, Departments, and Office. These agencies make environmental decisions for the state, and must ensure environmental justice in their decision-making. The agency that has the overarching responsibility for coordinating environmental justice programs for all state agencies, however, is the Governor’s Office of Planning and Research (OPR). The Director of OPR, the Secretary of Cal/EPA, and the heads of the Cal/EPA Boards, Departments, and Office, sit together on the Interagency Working Group on Environmental Justice. This working group must create a strategy to identify and address environmental justice gaps within their respective programs. In order to assure active and balanced participation by affected stakeholders outside of these agencies, the Legislature also established the Cal/EPA Advisory Committee on Environmental Justice

The EJ Advisory Committee prepared this Report in response to a specific legislative mandate. It also includes recommendations that go beyond the specific mandate that the EJ Advisory Committee felt were important to bring forward. This section of the report provides a brief description of the four entities mentioned above, and their specific mandates on environmental justice. Please refer to *Appendix E* for more complete information about California State law on environmental justice.

The Cal/EPA Boards, Departments, and Office (BDOs): The California Environmental Protection Agency, or Cal/EPA coordinates the activities of six environmental Boards, Departments, and Office, including the Air Resources Board, the Department of Toxic Substance Control, the Integrated Waste Management Board, the Department of Pesticide Regulation, the Office of Environmental Health Hazard Assessment, and the Water Resources Control Board. The mission of Cal/EPA is “To improve environmental quality in order to protect public health, the welfare of our citizens, and California’s natural resources. Cal/EPA will achieve its mission in an equitable, efficient, and cost-effective manner.” The agency has historically focused on multi-media coordination. It is now responsible for taking specific actions to achieve environmental justice in California. (*see Appendix F*)



Senate Bill 115 (Solis, 1999) requires the agency to conduct its programs and promote enforcement in a manner that “ensures fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state,” and develop a model mission statement on environmental justice. It also directs Cal/EPA to ensure greater public participation in the development, adoption, and implementation of its environmental regulations and policies, promote enforcement, improve research, and identify differential patterns of consumption of natural resources between different socio-economic groups.

Senate Bill 89 (Escutia, 2000) charges the Secretary of Cal/EPA to convene a working group (see below) to assist the agency in developing “an agencywide strategy for identifying and addressing gaps in existing programs, policies, or activities that may impede the achievement of

environmental justices.” Senate Bill 89 also directs the Secretary to convene an advisory group of external stakeholders (see below) to assist the agency and the working group in developing the agency’s strategy.

Senate Bill 828 (Alarcon, 2001) requires each Cal/EPA BDO to review its programs, policies, and activities to identify and address gaps that may impede the achievement of environmental justice. The Bill also established statutory deadlines for the completion of specific actions under Senate Bill 89.

These bills have been incorporated into California law in Government Code, Section 65040.12 (Title 7, Division 1, Chapter 1.5, Article 4), and Public Resources Code, Sections 71110-71116 (Division 34, Part 3). Please refer to *Appendix E* for more complete information about California State law on environmental justice

Cal/EPA’s six Boards, Departments, and Office, and their mission statements, are described below:

The Air Resources Board (ARB): The ARB oversees activities of 35 local and regional air pollution control districts. Districts regulate industrial pollution sources, issue permits, and ensure industries adhere to air quality mandates. The ARB also has primary responsibility for regulating emissions from mobile sources in California, the largest emissions sector, as well as consumer products. Its mission statement is “To promote and protect public health, welfare and ecological resources through the effective and efficient reduction of air pollutants while recognizing and considering the effects on the economy of the state.”

The Department of Toxic Substances Control (DTSC): DTSC regulates hazardous waste facilities. It also oversees the cleanup of hazardous waste sites and ensures that state and federal requirements for managing hazardous wastes are implemented. Its mission statement is “To restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality, by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.”

The Integrated Waste Management Board (IWMB): The IWMB promotes achievement of waste diversion mandates by local jurisdictions (cities and counties). It fosters markets for recovered recyclables, and enforces legal provisions to protect the environment and public’s health and safety. Its mission statement is “To reduce waste, promote the management of all materials to their highest and best use, and protect public health and safety and the environment, in partnership with all Californians.”

The Department of Pesticide Regulation (DPR): DPR regulates pesticide sales and use, and fosters reduced-risk pest management. The Department also oversees product evaluation/registration, environmental monitoring, and residue testing of fresh produce. It also oversees local use enforcement through the county agricultural commissioners. Its mission is “To protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management.”

The Office of Environmental Health Hazard Assessment (OEHHA): OEHHA is responsible for developing and providing risk managers in the state and local government agencies with toxicological and medical information relevant to decisions involving health. OEHHA also works with federal agencies, the scientific community, industry and the general public on issues of environmental as well as public health. Its mission statement is “To protect and enhance public health and the environment by objective scientific evaluation of risks posed by hazardous substances.”

The State Water Resources Control Board (SWRCB): The Board allocates water rights and arbitrates water right disputes. It develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Quality Control Boards. Its mission statement is “To preserve and enhance the quality of California’s water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.”

The heads of each of the Cal/EPA Boards, Departments, and Office are required to participate in the Cal/EPA Interagency Working Group (see below) under Senate Bill 89. They are also required by Senate Bill 828 to implement the strategy developed in consultation with the Interagency Working Group and the Cal/EPA Advisory Committee on Environmental Justice (see below).

The Governor’s Office of Planning and Research (OPR): The Governor’s Office of Planning and Research (OPR) is established as the coordinating agency in state government for environmental justice programs, under Senate Bill 115, in Government Code § 65040.12(c). OPR holds one-day workshops to teach state agency personnel about environmental justice, its statutory underpinnings, and how to address environmental justice issues that may arise in their work. The Office may provide more detailed and specialized training at a later date for interested state personnel who have completed the basic training. Senate Bill 89 requires the Director of OPR to sit on the Interagency Working Group, along with the heads of the Cal/EPA Boards, Departments, and Office. It also requires the Director to consult with the Secretary of Cal/EPA, the Resources Agency, the Trade and Commerce Agency, the Business, Transportation and Housing Agency, and the Cal/EPA Interagency Working Group on Environmental Justice, and any other appropriate state agencies, and all other interested members of the public and private sectors of the state. The Director must coordinate the Office’s efforts and share information, and review and evaluate information from federal agencies relevant to environmental justice. Assembly Bill 1553 (Keeley, 2001) requires OPR to develop guidance for cities and counties to incorporate environmental justice into their General Plans.

The Cal/EPA Interagency Working Group on Environmental Justice (“Working Group”): The Cal/EPA Interagency Working Group on Environmental Justice is made up of the Secretary of Cal/EPA, the heads of its Boards, Departments and Office, and the Director of OPR. Under Senate Bill 89, the Working Group is required to examine existing data and studies on environmental justice and coordinate with other governmental agencies, and community groups. It is directed to recommend criteria to the Secretary of Cal/EPA for identifying and addressing any gaps in existing programs, policies, or activities that may impede achievement of environmental justice. It must recommend procedures and guidance to Cal/EPA for

coordination and implementation of environmental justice, and for data collection, analysis, and coordination. It must also recommend procedures to ensure that public documents, notices, and hearings are concise, understandable, and readily accessible, and provide guidance for determining when it is appropriate for Cal/EPA to translate crucial documents, notices, and hearings for limited-English-speaking populations. The Working Group is also required to hold public meetings and take public comments on their proposed recommendations. (*see Appendix G*)

The Cal/EPA Advisory Committee on Environmental Justice: The Cal/EPA Advisory Committee on Environmental Justice was established in December 2001, in response to Senate Bill 89 (Escutia, 2000). The membership and mission of the Committee is set out the Public Resources Code § 71114. The Committee was originally created with thirteen members from specific sectors of external stakeholders. These thirteen members include: two representatives of local or regional land use planning agencies; two representatives from air districts; two representatives from certified unified program agencies (CUPAs); two representatives from environmental organizations; three business representatives (two from large and one from small business); and two representatives from community organizations. One of the first actions taken by the Committee, in response to valid concerns from the public, was to vote to support legislation to expand the representation on the Committee. In particular, numerous public complaints were made that the Committee did not include representation from African American community groups and Native American tribes, nor did the community/environmental group membership reflect a good geographic representation of the state. The legislation (Senate Bill 1542, Escutia), which was supported by the Committee, was signed by Governor Davis in September, 2002. Under this bill, four members were added to the Committee, which now includes seventeen members. The four new members include two additional representatives from community groups (both of whom represent African-American communities), one representative of Native American tribes, and one additional representative of small businesses. The new members also bring greater geographic diversity to the Committee.

Under Senate Bill 89, the Committee is mandated to assist Cal/EPA and the Interagency Working Group “by providing recommendations and information to, and serving as a resource for” them as they carry out their environmental justice mandates (Public Resources Code § 71114(a)).

III. PURPOSE AND SUMMARY OF RECOMMENDATIONS

The Committee’s recommendations are being made to the Secretary of Cal/EPA and the Interagency Working Group, in response to the specific mandate to the Committee under Senate Bill 89. In formulating these recommendations, the Committee sought and received extensive public input. As an outgrowth of the process, the Committee has identified ways to further the goal of environmental justice that go beyond those areas specifically outlined in Senate Bill 89. These recommendations are intended to assist Cal/EPA and Interagency Working Group as they develop their strategy to achieve environmental justice in California. The Committee has also made recommendations that affect entities outside the Cal/EPA umbrella that the Committee

feels have an important role in achieving environmental justice, especially if their actions will affect the success of Cal/EPA's strategy.

In making these recommendations, the Committee engaged in a robust discussion of precaution as a foundation for public policy. The Committee considered input from a broad range of stakeholders, including community groups and environmental justice organizations, business and labor, local governments, federal government agencies, representatives of Native American tribes, and scholars at academic institutions. The time and effort undertaken by the people who addressed the Committee was greatly appreciated, and Committee members gave careful consideration to the testimony presented. The introduction to the recommendations in Section V outlines some of the key issues considered by the Committee.

The Committee reviewed the charge to the Interagency Working Group in Senate Bill 89, as detailed in Section 71113 of the Public Resources Code. The Working Group is charged to do six essential things (described in Section II, above). The Committee's recommendations respond to this mandate as follows:

Examine existing data and studies on environmental justice, and consult with other agencies and affected communities. In reviewing existing knowledge about environmental justice, the Committee has engaged in an extensive public process. Community members provide a wealth of knowledge about the effectiveness of agency efforts to ensure environmental justice. The Committee has undertaken only a limited review of existing data and studies. By virtue of its membership, however, and the public process it has undertaken, the Committee has also consulted with other agencies. Section IV of this report details the process undertaken and comments received, in order to help the Working Group accomplish this legislative charge.

Recommend procedures to ensure that public documents, notices, and hearings are concise, understandable, and readily accessible to the public, and provide guidance on when it is appropriate to provide translation for limited-English speakers. The recommendations of Section V, Goal #1 are intended to help the Working Group accomplish this legislative charge. The Committee considered public participation in a broader context, believing it is a crucial part of achieving environmental justice, and listed criteria that identify successful and unsuccessful programs in public participation. Specific guidance is provided to enhance the availability of information and the effectiveness of efforts to increase public participation in agency decision-making processes. Guidance is also provided on other aspects of meaningful public participation, and largely responds to the input received from community members. Due to time constraints and the number of significant issues considered by the Committee, the Committee was not able to provide guidance on when it is appropriate to provide translation.

Recommend criteria for identifying and addressing any environmental justice gaps in existing programs, policies, or activities. The recommendations under Section V, Goal #2 are intended to help the Working Group accomplish this legislative charge. The Committee has not discussed criteria in any systematic way. Instead, the Committee has listed the general criteria that identify program elements that successfully incorporate environmental

justice. The Committee has also provided recommendations to improve specific program areas, in response to the issues raised in the public comment process.

Recommend procedures for data collection, analysis, and coordination, relative to environmental justice. The recommendations under Section V, Goal #3 are intended to help the Working Group accomplish this legislative charge. The Committee has provided recommendations in these areas, and has included additional areas based on public input. Community groups were anxious to play a broader role in studies that involve their communities. They are seeking opportunities and support for community-based research (discussed in more detail later), and the Committee has included recommendations addressing this issue. We note, however, that some commenters expressed hope that Cal/EPA would avoid using research and data gathering to delay acting on issues that require immediate attention.

Recommend procedures and guidance for the coordination and implementation of intra-agency environmental justice strategies. The recommendations under Section V, Goal #4 are intended to help the Working Group accomplish this legislative charge. The Committee has provided recommendations for intra-agency coordination, but felt some additional areas were pertinent to this carrying out this charge. Specifically, the Committee has also included recommendations for better coordination with agencies outside of Cal/EPA, and also for making sure Cal/EPA and its Boards, Departments, and Office are accountable to the public for strategy they ultimately develop to address environmental justice.

In general, the recommendations of this Committee reflect its commitment to sound science and robust public participation. In fact, the theme of meaningful public participation is central throughout all of the recommendations. At the same time, the Committee believes that pursuit of data, tools, and better processes should not prevent an agency from taking steps in the near term to address known environmental justice problems. To this end, the Committee will identify actions that can be taken quickly, and intends to include recommended next steps and timelines to enhance accountability. This implementation guidance will be incorporated into Section VI of the report.

In Section VII, the Committee has identified key areas of government action outside of Cal/EPA or the Interagency Working Group that should be evaluated and, where appropriate, improved to ensure environmental justice for all Californians. Additional materials that will help the reader understand and use this report to further the goal of environmental justice are provided in Section IX, Background Materials and References.

IV. SUMMARY OF PUBLIC PARTICIPATION AND COMMENTS RECEIVED

Background

The EJ Advisory Committee completely supports the importance of full and meaningful public participation in environmental decision-making processes. In keeping with this belief, the Committee provided extensive opportunities for the public to engage the Committee in

discussions about the development of these recommendations, and about environmental justice in general.

- All Committee meetings are public meetings and include at least one public comment period.
- Many Committee meetings have included more than one opportunity for public comment, and the first few Committee meetings were almost entirely devoted to public comment.
- Committee meetings have been held in a number of different locations to allow broader public participation. Although more recent budget constraints have limited the Committee's ability to travel throughout the state, meetings are taped and conference call and online access to meetings have been provided.
- Meeting notices have been provided in multiple languages and interpreters have been made available at the meetings.
- Information about this process has been available on the Cal/EPA website, in writing, and by email.
- Comments on the draft recommendations, and environmental justice issues in general have been received through oral testimony and written correspondence (including electronic correspondence).

Draft EJ Strategy Framework

The process of preparing these recommendations began with a "white paper" document prepared by Cal/EPA staff. The document was framed as a draft strategy for achieving environmental justice goals; it included four key elements, each with more specific objectives and possible action items to implement the elements. The four elements were drafted as follows:

- **Element #1:** *Ensure environmental justice is integrated into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.*
- **Element #2:** *Ensure meaningful public participation and promote community capacity building to allow communities to be effective participants in environmental decision-making processes.*
- **Element #3:** *Improve research and data collection to promote and address environmental justice related to the health and environment of communities of color and low-income populations.*
- **Element #4:** *Ensure effective cross-media coordination and accountability in addressing environmental justice issues.*

The EJ Advisory Committee reviewed the draft framework elements, and then Cal/EPA staff used the draft framework to guide public discussion at a series of five workshops held throughout the state. Workshops were held in Oakland, Monterey, Fresno, Los Angeles, and San Diego, during the month of September 2002. Cal/EPA staff conducted extensive community outreach in advance of each workshop, including mail-outs, email announcements, personal communications, and posting on the Cal/EPA website. Materials were available in English and Spanish. A combined total of roughly 200 people participated at the five locations, including participation by Committee Members.

At each of the workshops, Cal/EPA staff reviewed recent legislation on environmental justice in California, as well as the structure and role of Cal/EPA as an environmental agency, and specifically in regard to environmental justice. The draft Environmental Justice Strategy Framework was presented, including objectives and potential action items, and public input was sought. During the facilitated discussion, participants were encouraged to articulate concerns and perspectives and respond to the draft Environmental Justice Strategy Framework. Participants made comments to support, revise, or object to the Elements, recommended additional objectives or potential action items, and provided examples that illustrated problems or clarified interpretations of the Framework document. Each workshop was tape recorded and summarized, and subsequent written comments were encouraged.

Using the public input from the workshops, Cal/EPA staff revised and expanded the draft Environmental Justice Strategy Framework, incorporating additional objectives and actions, as well as observations and examples identified by the public.

Draft Recommendations Report

The revised draft Environmental Justice Strategy Framework document was discussed by the Committee at a public meeting in November 2002, and formed the starting point for the Committee's deliberations and the recommendations in this report. At the November meeting, the Committee identified the basic structure and general content for this report, and established a subcommittee to undertake the actual drafting of the document. Over the subsequent six months, the Drafting Subcommittee prepared draft language in sections for the Committee to discuss and the public to comment on at Committee meetings, and then incorporated changes to the document based on those discussions and comment.

Summary of Public Comments

During the roughly 18-month period that the Committee met to develop these recommendations, members of the public identified a wide range of issues. A very brief summary of some of the concerns most frequently heard includes the following:

- The individual authorities, roles, and responsibilities of the different environmental agencies at the federal, state, and local level are very difficult for members of the public to sort out, and at times appear to be unclear to the agencies themselves.
- Environmental agencies have a long history of failing to engage community members in a meaningful way in the decisions being made that affect the community.
- There is a gap in authority/accountability when environmental justice problems arise because of federal facilities, and this needs to be addressed.
- How much authority does Cal/EPA have to really address environmental justice problems, and is this just another paperwork exercise?
- The business community needs agencies to approach environmental regulation in a systematic way, with clear criteria for requiring action that are consistently and fairly applied.
- Careful land-use and zoning decisions are the foundation for ensuring environmental justice goals are achieved.

- Existing environmental programs (such as the California Environmental Quality Act) have failed to provide community members with the degree of environmental protection they desire.
- The legislative mandate for Cal/EPA to address environmental justice has very specific language, especially concerning criteria and gaps that should not be ignored.
- Community members want greater control over their communities, and decisions that affect them.
- Workers and organized labor groups do not want environmental protections to be implemented in a way that threatens jobs.
- Local governments need the flexibility to prioritize efforts in response to local needs, in order to maximize limited resources.
- Community members believe project proponents (i.e., industry) should have to prove that a proposed project is safe before the project could be approved.
- The business community wants environmental decisions to be based on sound science and careful cost-benefit analysis.
- Community members do not believe that environmental agencies provide adequate enforcement of existing laws, regulations, and requirements, or that they respond adequately to community complaints.
- Local governments have great concern about new mandates that do not have associated funding.
- Farm workers need better protection from pesticide exposure for themselves and their families, both in the field and in the communities surrounding the fields, and especially at schools.
- Agencies need to do a better job of assessing cumulative impacts on communities.
- Regardless of data needs and the lack of tools for sophisticated analyses, certain communities are obviously impacted and there are things that can and should be done now to help them.

The above is not in any way a complete list of the concerns that have been raised to the Committee, nor does it capture the strong emotions that accompanied much of the testimony. It is also not organized to reflect any priority or importance. It does, however, provide a general sense of the range of concerns that the Committee has had to consider in preparing its recommendations. A more detailed summary of public testimony and written comments is included in *Appendix H*.

The Committee also solicited specific public input on the use of precautionary approaches, possible definitions and interpretations of the Precautionary Principle, and approaches to assessing cumulative impacts. Presentations were made to the Committee at a meeting focused specifically on those issues, and substantial written and oral public comment was received. Materials considered by the Committee can be found in *Appendix I*.

V. RECOMMENDATIONS OF THE CAL/EPA ADVISORY COMMITTEE ON ENVIRONMENTAL JUSTICE

The Committee recommends that each Cal/EPA Board, Department, and Office (BDOs) will develop its own policy document to more specifically guide its environmental justice program, consistent with, but not limited to this report. Some of the BDOs have already begun this process, and may even have completed a policy document on environmental justice. These BDOs should still review the recommendations in this report, however, to identify any areas or concepts that they have not addressed, and to support collaboration and ensure program integration across media and throughout the agency. The four environmental justice goals identified by the Committee should guide the creation of each BDO policy document. For each Goal, the Committee has established a general checklist of the criteria that distinguish successful programs in that area. A list of warning indicators is also provided, to alert the BDOs to programs that may not be achieving the Environmental Justice Goals. The BDOs should use these lists as they develop and implement policies and actions for environmental justice.

In considering its Recommendations, the Committee sought and received substantial public comment (see previous section). The Committee has given careful consideration to the comments made by the public, and is grateful for the input. The Committee has structured its Recommendations around four key goals. These goals are framed after the four draft strategy elements, and have been identified by the Committee as “Environmental Justice Goals.” Broadly, they reflect the mandates given to the Committee and the Interagency Working Group. The goals also reflect the Committee’s understanding of the broader issue of environmental justice, and therefore encompass more than the specific items the Committee was directed to address. The goals include: (1) providing for meaningful public participation, (2) integrating Environmental Justice in all environmental programs, (3) improving research and data collection with respect to environmental justice, and (4) ensuring coordination and accountability in addressing environmental justice. As mentioned previously, the Committee also engaged in a significant discussion of precautionary approaches to environmental regulation, and the analysis of cumulative impacts. Some very concrete recommendations came out of these discussions, and the public comment received on the issue. These recommendations appear throughout the four goals, although they are most heavily concentrated under Goal #2. In addition to the actual recommendations, the Committee reached some important conclusions on use of precaution, and the considerations that affected our ability to reach consensus on this issue.

The Committee reached broad consensus on the importance of using precautionary approaches to environmental and public health protection. Committee members believe that it is not necessary or appropriate to wait for actual, measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm. The Committee also recognizes that many programs currently implemented by Cal/EPA and its Boards, Departments, and Office are precautionary in nature. Based on the data available to the Committee, it also concludes that additional precaution may be needed in order to address or prevent environmental justice problems.

Consensus was more difficult on the question of where specifically greater precaution is warranted, and to what degree. Committee members struggled to balance a number of

competing needs and concerns. The following is a brief list that is intended to characterize the types of needs and concerns the Committee worked to balance, but it is by no means complete.

- The need for programs and agencies to be more responsive to community concerns about potential threats to their health and/or environment, balanced with a concern that resources are limited and need to be expended to prevent or mitigate well-understood impacts on public health and the environment, and targeted at the most significant impacts first.
- The need for scientifically supported tools, processes, and decisions, balanced with a concern that lack of complete scientific data has been used in the past to delay or prevent reasonable actions to address pollution problems.
- The need of community members to be assured that their health and environment will not be placed at risk by environmental decisions, balanced with a concern that no action can ever be shown to be risk free.
- The need of agencies and businesses to minimize costs and maximize benefits of actions undertaken, balanced with a concern that current methods of evaluating costs and benefits do not adequately address the wider costs to society and benefits of environmental decisions, or the distribution of those costs and benefits.
- The need to reduce emissions/discharges and exposures to toxic contaminants within a disproportionately impacted community, and concerns about the potential for business closure and job loss.

There is a certain amount of tension between the desire for a clean and healthy environment, and the desire for a vital and productive economy that cannot be avoided. Committee discussions and the testimony received repeatedly highlighted this tension. For example, the Committee had extensive discussion about ways to ensure that less toxic alternatives are not only considered, but also actually used. A number of case studies were mentioned where less toxic materials have been successfully and cost-effectively substituted for a variety of purposes ranging from cleaning products to pest control to product manufacturing. Committee members also heard from the business community that it has very significant worries about the impacts of regulatory intervention in this area, believing that governmental agencies do not have the expertise to dictate the materials used in manufacturing processes.

The Committee recognizes that the goals of environmental and economic health are not mutually exclusive, and can even be mutually supporting. Examples of the latter case include experiences where innovation to meet environmental goals results in a new, successful product or sector for the economy, and where the implementation of pollution prevention measures reduce pollution burdens while generating economic savings for businesses by reducing or eliminating the cost of materials, environmental permit fees, and associated administrative and production expenses.

The Committee heard and considered carefully the concerns expressed by many that the welfare of a community depends on *both* its environment and the availability of jobs for community members. Recognizing this, the Committee urges those who would take action to address environmental justice issues with a community to strive for solutions that do not have an adverse economic impact on the community or jobs, and to involve community members and other stakeholders in decisions that might impact jobs. In some cases, a primary impact on certain jobs may be unavoidable; Committee members acknowledged this but felt these cases would be the

exception rather than the rule, and pointed to the use of job relocation, “just transition” and other efforts to create new, less environmentally damaging economic opportunities when job loss cannot be avoided.

The Committee also identified two objectives that should not be viewed as competing, and should be considered a fundamental part of successful, just, environmental programs.

- First, the Committee specifically recognizes the frustration of community members who feel they have faced unreasonable hurdles to demonstrate that their health and/or environment are in fact being harmed, or are at risk of substantial harm, and the Committee believes Cal/EPA should take steps to make its decision-making processes more available and responsive to community concerns.
- Second, the Committee also recognizes the importance of economic vitality in the state, and the business community’s need for fair and predictable processes, and requirements that are feasible both technically and on the basis of cost; the Committee believes that Cal/EPA should pursue solutions that meet these needs.

In seeking environmentally just solutions, Cal/EPA should give priority to these two objectives.

The Committee recognizes that different environmental problems pose different levels of risk to public health. Community members need to know what levels of pollutants to which they are exposed, and agencies must prioritize environmental problems to give priority to environmental problems that pose the greatest health risk.

A number of the Committee’s recommendations address the cumulative impacts on a community, including the need for better data and tools to evaluate cumulative impacts, as well as strategies to reduce those impacts. The term “cumulative impacts” does not have a single definition, however, and is used in a number of different ways in different environmental statutes, regulations, policies, and programs. The Committee has not offered a single definition of “cumulative impacts” but has instead directed Cal/EPA to use a meaningful public process to establish such a definition, beginning with the definition in the California Environmental Quality Act (CEQA), and making use of the work of other agencies and organizations currently working in this area.

Rather than debate definitions for broad concepts, the Committee focused its efforts on identifying practical applications of precaution and mitigation strategies. Consensus here was also difficult, but improved when certain factors were clearly present. The following list briefly characterizes select factors that helped bring Committee members closer to agreement.

- The potential harm is significant and commonly recognized.
- The actions or alternatives contemplated have been shown in practice to be feasible and low cost.
- Resources are available to provide technical and financial assistance.
- Processes are transparent, and structured to allow all affected parties to fully understand the actions under consideration, to participate meaningfully, and communicate their key interests.

Committee members also were careful to articulate outcomes that were not intended to result from these recommendations. The following list describes some of the outcomes that Committee members felt should be avoided.

- Recommendations to collect and consolidate data should not result in lengthy delays in the implementation of reasonable, feasible strategies to reduce known and significant impacts.
- Recommendations to establish policies and engage in more meaningful public processes should not supplant efforts to implement and enforce requirements for environmental and public health protection.
- Recommendations to enhance precaution should not be interpreted to mean a guarantee of zero risk, or a mandate to act without credible threat of harm.
- Recommendations should be implemented in a manner that provides regulatory certainty for communities and businesses.

In general, as Cal/EPA and its BDOs undertake these recommendations, they should strive to avoid extremes in their interpretations. Instead, the recommendations should be implemented in the spirit in which they were made: with a genuine desire to identify real environmental justice problems, including circumstances of disproportionate, cumulative impacts, and to make real and measurable improvements in those situations.

Improving public participation in environmental decision-making forms the foundation for successful implementation of the other goals. Wherever recommendations under the other goals call for the use of public participation or public process, the Committee explicitly means a public participation process as described under Goal #1.

Goal #1: Ensure meaningful public participation and promote community capacity building to allow communities to be effective participants in environmental decision-making processes.

Meaningful public participation is critical to the success of any effort to address environmental justice issues. For that reason, it is the first goal identified by this Committee, and the successful implementation of the other goals rests on realizing this one. The criteria that distinguish successful programs for meaningful public participation include:

- ✓ Guidelines for meaningful public participation.
- ✓ The identification of an office or contact person who has authority and responsibility for coordinating effective public participation opportunities.
- ✓ Awareness of and sensitivity to community-specific communication issues (including media, venue, language, and other cultural issues).
- ✓ Relationship building prior to environmental decision points.
- ✓ Educational, technical, and other assistance (i.e., capacity building) to support meaningful participation in environmental decisions – subject to the specific limitations in state law regarding the use of government funds for lobbying and other activities.
- ✓ Early public involvement in environmental decisions.
- ✓ Availability and timeliness of materials and information.
- ✓ Feedback to participants and commenters.

There are also indicators that a public participation program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. Gaps in programs that result in less meaningful public participation may be indicated by the following warning indicators:

- Complaints from the public (including lack of opportunity to comment, inadequate notice of events, inconvenient meeting times/locations, unavailable materials, lack of responsiveness from agency, etc.)
- Poor attendance at public meetings and low response to notices, requests for comment, etc.
- Lack of participation by a particular community or segment of a community, especially if English is not the primary language.
- General belief within the community that their input does not influence the outcomes of agency decisions.

The Committee recommends specific actions to ensure meaningful public participation in environmental decision-making. The recommendations are organized into four categories. These categories are: (a) Guidelines & Staff Training, (b) Availability of Information, (c) Capacity Building, and (d) Relationship Building.

Guidelines & Staff Training

These are recommendations for internal activities to support meaningful public participation.

- Develop guidelines for agency staff on meaningful public participation and community relations that emphasize collaboration with community members on environmental issues and building and sustaining productive working relationships with communities.
- Enhance staff training to increase awareness of environmental justice, including but not limited to, public participation, meaningful community outreach, and public accessibility of information, and ensure that staff training is an integral component of all of these elements.
- Collaborate with other agencies or governmental offices (including federal, state, local, and tribal governments, and the Mexican government on cross-border issues) to leverage resources, avoid duplication of effort, and enhance effectiveness of public participation opportunities.
- Extend staff training opportunities to stakeholders, especially local governments, who interact with the communities on similar or related issues.
- Add public participation responsibilities to appropriate job descriptions and include public participation criteria in employee performance reviews.

Availability of Information

These recommendations are designed to increase public access to information necessary for meaningful participation in environmental decision-making.

- Initiate outreach efforts as early as possible in the decision making process, before significant resources have been invested in a particular outcome.
- Design outreach efforts to appropriately address the culture of the community (e.g., urban, rural, migrant, etc.) to improve community participation.
- Distribute notices and materials widely throughout the community. If all materials cannot be widely distributed, provide quick, easy access for community members to obtain them.
- Use multiple ways of notifying the community of upcoming meetings, workshops, hearings, and proposed action dates (e.g., electronic posting on websites, announcements through local media, fliers at libraries, schools, community centers, etc.).
- Encourage communication in non-traditional ways; for example, use “universal” pictures to convey complex ideas instead of (or to supplement) technical written materials and blueprints.
- Ensure materials are distributed far enough in advance of meetings, workshops, hearings, or proposed action dates to allow community members sufficient time for review and comment.
- When environmental decisions directly affect a specific community (for example, siting decisions), hold meetings and workshops, at times and locations that are convenient for community members to attend.
- Provide adequate translation or interpretation services for documents and public meetings.
- Complete the “plain, straightforward language” description of how to navigate California’s complex regulatory process (mandated by January 2002 legislation renewing Polanco Act of 1990).

Capacity Building

These recommendations are made in response to community comments about their need for resources to increase their understanding of the technical and procedural aspects of environmental decision-making, in order to participate in a meaningful way.

- Develop and widely distribute a handbook for the public that identifies and explains public participation rights and opportunities.
- Identify opportunities to provide grants and technical assistance to communities and local government, to enhance their knowledge and understanding of environmental issues and governmental processes.
- Implement and support the Cal/EPA Environmental Justice Small Grants Program (Assembly Bill 2312, Statutes of 2002) to enhance stakeholder participation in environmental decision-making processes.
- Explore ways to assist stakeholders in reviewing technical documents related to environmental decisions affecting their communities (such as providing access to technical experts through local colleges or universities).
- Provide and/or support educational and training opportunities for community members such as seminars on specific media, programs, etc. For example, a lecture by agency staff or through a local college could build community understanding of brownfield redevelopment.
- Where possible, collaborate with existing community adult-education programs.

Relationship Building

These recommendations reflect public comments underscoring the need for a respectful relationship if meaningful communication is to occur.

- Initiate communication with communities before environmental decisions/concerns arise, and continue regular opportunities for ongoing communication.
- Explore opportunities to establish community affairs offices and to recruit community residents for positions in these offices.
- Establish community liaisons, advisory groups, and task forces.
- Capitalize on existing community resources by building positive and effective working relationships with community-based and non-governmental organizations.
- Ask community members to identify issues, questions, and/or concerns, separate from the agency's agenda.
- Identify what the agency can and will do, and establish timelines and accountability.
- Provide feedback to people or groups who make comments, suggestions, complaints, requests, etc. Acknowledge ideas and efforts that shape agency actions (give credit where credit is due).
- Create and maintain an atmosphere of openness and mutual respect.

Goal #2: *Integrate environmental justice into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.*

Establishing Criteria to Identify Environmental Justice Gaps: Where environmental justice impacts have already been documented, or environmental justice concerns are clearly understood to exist, discussions about criteria should not prevent agencies from using available data and tools, and taking action to respond to those concerns. The Committee also recognizes that there are also circumstances where the existing data and tools do not allow a quick determination of either the problem or the appropriate response. Development of these data and tools should be a high priority, as should fair criteria for their use. In developing the data, tools, and criteria for their use, agencies should ensure meaningful public participation (see Goal #1).

Programs that have successfully integrated this environmental justice goal will meet the following criteria:

- ✓ Consider environmental justice issues in developing and revising programs and program elements, including explicit analysis of environmental justice in the staff report for significant actions, or other supporting documentation.
- ✓ Ensure that program development and adoption processes do not create new, or worsen existing, environmental justice problems.
- ✓ Ensure meaningful public participation in environmental decision-making processes.
- ✓ Establish guidelines, procedures, and performance measures to ensure equitable implementation and enforcement of programs.
- ✓ Include data, tools and procedures to identify existing environmental justice problems.
- ✓ Give high priority to actions (e.g., funding criteria) that will address existing environmental justice problems.
- ✓ Dedicate resources and identify staff members responsible for assuring that the agency properly considers and addresses existing and potential environmental justice problems.
- ✓ Assess the relationship between socio-economic indicators (i.e., race, income, etc.) and the distribution of pollution sources and any associated health impacts.

There are also indicators that a program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. Programs that have less successfully integrated environmental justice may be identified by the presence of one or more of the following warning indicators:

- Data indicate that low-income populations and/or communities of color are disproportionately impacted by pollution.
- Public complaints are made regarding inadequate or unfair enforcement of agency rules and regulations.

- Agency resources are disproportionately deployed (i.e., fewer resources are devoted to low income communities or communities of color than are devoted to wealthier, predominantly Caucasian communities).
- Penalties for environmental violations with similar fact patterns are lower for violations in low income communities or communities of color.

Addressing Environmental Justice Gaps: The following recommendations are intended to prevent the creation of new Environmental Justice problems, and to help address existing gaps identified by the Committee. In order to facilitate review and discussion of the Committee's recommendations to address Goal #2, the Committee has grouped the recommendations into three broad categories. The categories are: (a) Program Development & Adoption, (b) Program Implementation, and (c) Program Enforcement.

Program Development & Adoption

(Note: Also refer to Section VIII for an Alternative Opinion related to this section)

Program development and adoption varies somewhat between the Cal/EPA Boards, Departments, and Office, because their authorities, mandates, and administrative procedures are different. In general, however, these are activities undertaken to establish new program elements through a public process with all stakeholders.

- Include an analysis of environmental justice when developing and revising programs and program elements, including explicit analysis of environmental justice in the staff report or other supporting documentation.
- Consult with communities and other stakeholders, and consider their priorities and concerns prior to developing or revising program elements, rules, or policies.
- Give high priority to known environmental justice problems when establishing program development agendas.
- Use a public process to identify opportunities to advance environmental justice goals within the current statutory and regulatory structures, as well as any necessary changes or clarifications.
- Officially recognize the importance of precaution, and that it is not always necessary or appropriate to wait for actual, measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm.
- Identify, for each BDO, significant decision points or processes within existing and developing programs where a precautionary approach is currently used, or could be used, and evaluate whether additional precaution is needed to address or prevent environmental justice problems.
- Identify, through a public process, a set of criteria or indicators that can be used as a preliminary assessment to locate and prioritize potential environmental justice problems, and how the prioritized information will be used.
- Identify, through a public process, a set of reasonable, cost-effective, achieved-in-practice approaches that could be used to prevent or minimize adverse environmental impacts, and develop a process for consideration and use of these approaches.

Program Implementation

As noted already, the programs of the different Boards, Departments and Office vary considerably. Public comments were received about specific programs, or aspects of those programs. The Committee has developed recommendations following the issues raised by the public, and has grouped them along common themes. The areas considered are: Land Use and Zoning, Facility or Project Siting and Permitting, Mobile Source Pollution Control, Risk Reduction and Pollution Prevention, and Site Remediation.

Land Use and Zoning

(Note: Also refer to Section VIII for an Alternative Opinion related to this section)

Understanding that local government has the primary responsibility and authority for making zoning and land use decisions under existing law, Cal/EPA and OPR should take the following actions to address environmental justice issues.

- Clarify and describe Cal/EPA's and OPR's role in local and regional land use and zoning decisions.
- Collaborate with local governments, environmental justice and community groups, and other stakeholders to help them identify and address environmental justice issues, particularly as they relate to community planning, and locally undesirable land uses.
- Develop a list of obvious, high-impact project scenarios that should be avoided, and make this list available through outreach and training to local land-use planners, communities and other stakeholders.
- Collaborate with OPR to identify actions that local governments and the federal government should consider to reduce impacts of pollution in communities identified as disproportionately impacted, such as:
 - *Creation of buffer zones around significant sources of risk;*
 - *Relocation of small sources away from residential areas or sites of sensitive receptors;*
 - *Develop tools for communities and local governments to use for evaluating the siting of facilities that significantly increase pollution in disproportionately impacted communities, including the authority for denial of permits, and increase the weight of community involvement in those decisions;*
 - *Engage community and environmental justice groups in community planning activities that address the potential conflicts between jobs, economic development, and environmental health; and*
 - *Adoption of stricter control and/or pollution prevention measures to reduce pollution and health risks.*

In implementing these actions, Cal/EPA should not place an unfunded mandate on local government and/or local programs. Cal/EPA should also actively seek and support mechanisms for funding actions or projects that support environmental justice, including new funding opportunities specifically for environmental justice projects, and changes to criteria for existing or emerging funding programs to ensure these sources are consistent with and supportive of the goals of environmental justice.

- Collaborate with OPR, and community groups, local governments, and other stakeholders, on the development of land use and zoning guidance for local government, including:
 - Requirements for local government to demonstrate integration of environmental justice principles into general plans at their next General Plan update.
 - Requirements for local government to adopt new land use and zoning laws which use a buffer zone, objective siting criteria, or other measure to prevent the location of residences, schools, or other sensitive populations near significant sources of pollution.
 - Pursue amendments to the California Environmental Quality Act (CEQA) to require more meaningful alternatives assessment that addresses all reasonably viable alternative processes, methods and locations for new projects.
 - Require cumulative impact analysis for new applications.
 - Significantly increase the role and influence of community residents and the weight of their recommendations via community planning groups or other entities that have a significant role in the permit decision-making process, consistent with Permit Streamlining Act requirements.

Facility or Project Siting and Permitting:

(Note: Also refer to Section VIII for an Alternative Opinion related to this section)

- Identify the appropriate roles of Cal/EPA and its Boards, Departments, and Office in promoting environmental justice in permitting and siting decisions.
- Where Cal/EPA or a BDO has direct authority or decision-making responsibility in permitting actions, the agency should establish, through a public process and hearing, a programmatic framework (e.g., regulations, policies, or other means) for permitting decisions that includes:
 - Specific criteria to identify environmental justice problems when evaluating a permit application; and
 - Fair and effective mechanisms to address identified environmental justice problems as part of the permit action.
- Where Cal/EPA advises or oversees local governments that have primary jurisdiction in permitting and siting decisions, the agency should work with those impacted communities and local governments (before permit applications have been submitted to them) to help them establish appropriate programmatic mechanisms to identify and address environmental justice gaps in permitting and siting decisions.
- Collaborate with OPR (in its capacity as the state's coordinating office for environmental justice) to establish general guidelines for other state agencies to help them create

appropriate, programmatic approaches for their permitting and siting decisions to identify and address environmental justice issues.

- Develop and make available to other state and local agencies, communities and other stakeholders, tools and information to support environmental justice considerations in permitting and siting decisions.
- Establish and provide to local government health-based permitting requirements that would prevent the issuance of permits for certain types of activities near sensitive receptors.
- Establish permit action thresholds and control requirements commensurate with an area's media specific cumulative pollution burden.
- In areas that have been identified as having a disproportionately high cumulative impact, require applications for new or modified facilities to include a pollution prevention analysis that addresses materials that are significant (because of volume, potential risk, hazard, etc.), and includes the following:
 - Opportunities for material substitutions;
 - Top-down selection of alternative materials (i.e., non-toxic is considered first and then the next least toxic material, and so on);
 - Clear justification for any proposal to use a material other than the least toxic available (including, for example, availability of data or materials, feasibility of substitution, product performance/safety issues, etc.) and;
 - Other alternatives analyses (i.e., process changes, fuels substitutions, movement of raw materials/product, other energy considerations), with justification for the alternative selected.

Mobile Source Pollution Control

- Identify expanded roles for Cal/EPA and its Boards, Departments, and Office in promoting environmental justice through reducing pollution from on- and off-road mobile sources.
- Where Cal/EPA or a BDO has direct authority or decision-making responsibility, the agency should establish through a public process a comprehensive series of initiatives to promote and/or require the use of less-polluting engines and/or fuels, or add-on control devices, in response to environmental justice needs.
- Cal/EPA should work with federal government agencies to help it establish enhanced programmatic mechanisms to identify and address environmental justice impacts substantially related to on-and off-road mobile source pollutant emissions under its sole jurisdiction (e.g. trains, ships, aircraft, off-road engines including farm equipment, and federal facilities).
- Where Cal/EPA advises or oversees local governments/agencies that have primary jurisdiction in permitting, siting, and/or procurement decisions, the agency should work with those local governments/agencies to help them establish programmatic mechanisms to identify and address environmental justice impacts substantially related to on- and off-road mobile source pollutant emissions
- Collaborate with OPR and California Energy Commission (CEC) (in their capacity as responsible agencies for CEQA and energy/fuels policy, respectively) to establish

policies and guidelines to address environmental justice impacts substantially related to on- and off-road mobile source pollutant emissions.

- Develop and make available to other state and local agencies, communities and other stakeholders, tools, information, and funding to support environmental justice considerations related to on- and off-road engine and vehicle operation.
- In areas that have been identified as having a disproportionately high cumulative impact, consider the establishment of special requirements that would fully or partially mitigate the contribution from on- and off-road engine and vehicle operation.

Risk Reduction and Pollution Prevention

(Note: Also refer to Section VIII for an Alternative Opinion related to this section)

- Conduct a public process to establish a common definition of ‘cumulative impact’ starting with the definition in the California Environmental Quality Act (CEQA) and consulting with other agencies working on cumulative impacts.
- Develop, through a public process, peer-reviewed tools to assess cumulative impacts, and equitable, scientifically based criteria for using these tools, especially as they may be used to further the goals of environmental justice.
- Develop criteria and protocols, through a public process, for identifying and addressing environmental justice gaps in standard risk-assessments, taking into account potentially impacted and affected sensitive populations and the state of the science in modeling health and environmental risk-assessments.
- Develop criteria and protocols to enhance current approaches to cost-benefit analysis (where such analysis is needed and required) that support a more comprehensive evaluation of external costs and benefits, such as health, environment, innovation, economic development, and other important societal values when devising strategies to reduce pollution and health risks.
- Reduce environmental risks to children through pollution prevention and other mechanisms by using a public process to:
 - Identify the pollutants and pollution sources (including industrial, municipal, transportation, and others) which present the highest risk to children, based on toxicity, proximity, persistence, or other factors;
 - Prioritize these pollutants and processes for further action, and conducting research into non-toxic and/or less toxic alternatives;
 - Require adoption of non/less toxic alternatives through a comprehensive alternatives assessment process that includes evaluation of technical feasibility and cost, and allows a reasonable transition period; and
 - Provide information and resources to businesses, municipalities, and other entities to encourage the use of non/less toxic alternatives.

In order to implement the above, Cal/EPA should identify and exercise its authority to the fullest extent, where needed seek additional environmental protection authority through legislation, or promote action by other agencies that have authority, as appropriate. Cal/EPA should also seek funding to assist schools and municipalities to implement pollution prevention programs. In implementing these actions, Cal/EPA should not create an unfunded mandate for local governments. Select examples of risk reduction actions could include:

- *Requiring schools and municipalities to implement Pollution Prevention or precautionary approaches to reduce and eliminate the use of toxic pesticides, cleaners, paints, inks, etc., based on a comprehensive assessment of alternatives;*
 - *Requiring municipalities to redesign traffic flow to limit or eliminate diesel vehicle traffic through residential communities;*
 - *Requiring welding operations to utilize low-fume/low heavy metal welding rods and low-fume processes; and*
 - *Instituting a phase-out of toxic boat bottom paints, specifically copper leaching and copper ablative bottom paints.*
- Reduce existing and potential environmental health problems in impacted communities by taking the following actions. In implementing these actions, Cal/EPA should not place an unfunded mandate on local government and/or local programs.
 - Identifying all facilities and operations based on existing data that may pose a threat to human health and the environment because of their storage, use, disposal, or emission/discharge of hazardous substances, including pesticides. To implement this item, Cal/EPA should make use of currently available data under California's right to know laws and federal facilities information, including Superfund and the National Priorities List (NPL), and shall at a minimum rely on the thresholds for reporting under those laws.
 - Using a public process, assess cumulative pollution burden for disproportionately impacted communities based on the degree of threatened harm to human health and the environment that communities experience.
 - Using a public process and data from the previous two steps, identify and prioritize disproportionately impacted communities.
 - Using a public process, establish goals and performance measures to reduce the threat of harm to human health and the environment in these disproportionately impacted communities, using enhanced pollution controls and pollution prevention.
 - Create effective mechanisms with the community for public participation, and support state and local agencies, to enhance the role played by residents in disproportionately impacted communities in decisions about how to reduce pollution and risks in their community.

- Work with the Department of Health Services (DHS) to establish goals to reduce health and environmental risks, such as:
 - *Identifying contaminants in breast milk and/or children's blood, the key sources of those contaminants and routes of exposure, and setting goals and timelines to eliminate the contamination;*
 - *Setting goals and timelines for eliminating lead poisoning in children; and*
 - *Setting goals and timelines for reducing the incidence of asthma, environmental-related cancer, and other environmental-related illnesses.*
- Establish a California Office of Pollution Prevention (or some other formalized, centralized multi-media group) to:
 - Serve as a clearinghouse for information on less and non-toxic products and processes;
 - Evaluate products and processes under consideration by municipalities and industries;
 - Conduct research into new processes and products that could provide less toxic, or non-toxic alternatives for municipalities and industries; and
 - Provide support to municipalities, industries, and other entities seeking to implement the recommendations for "Risk Reduction and Pollution Prevention", and other related recommendations in Goal #2.
- Identify and address environmental justice gaps related to preventative approaches to risk reduction.
- Within Cal/EPA, all risk assessment analyses of material toxicity, hazard, or potential for harm to human health or the environment should be conducted by a single office and that office should not also have risk management responsibilities.
- Where a Cal/EPA BDO has, or has had, responsibility for both risk assessment (as described above) and risk management, the office which will have sole risk assessment responsibility for Cal/EPA should review, and where appropriate, revise prior risk assessment decisions by the other BDOs to ensure they use sufficient precaution to protect public health and the environment. The review should consider advances in the current state of scientific knowledge and data, and should specifically address disproportionate health and environmental impacts on low-income communities and communities of color.
- Where a Cal/EPA BDO has direct responsibility for risk management programs, the BDO should review, and where appropriate revise such programs to ensure they use sufficient precaution to protect public health and the environment. The review should consider advances in the current state of scientific knowledge and data (including routes of exposure, indoor exposure, and area source exposure, such as exposure to herbicides, pesticides, transported wastes, and consumer products), and should specifically address disproportionate health and environmental impacts on low-income communities and communities of color.
- Explore opportunities for demonstration for new technologies that will reduce pollution and health risks.

Site Remediation

- Develop criteria and protocols for identifying and addressing environmental justice gaps in clean-up related activities (e.g., standard setting, risk assessments, etc.).
- Recognizing that sites posing the greatest health risk receive top priority, give high priority to remediation projects in situations of known environmental justice problems, especially where the contaminated site contributes a substantial portion of cumulative impacts to the community.
- To promote the reuse of known or suspected contaminated (i.e., brownfield) sites, and to increase the supply of affordable housing Cal /EPA should:
 - Establish a statewide database of contaminated sites that, after clean-up, have potential for redevelopment, especially mixed-use and/or affordable housing, and publish this information online. In compiling this database, existing databases such as the state's Cortese List (California Government Code § 65962.5) and lists of federal facilities with housing potential (i.e., base closures, etc.) should be consulted;
 - Establish guidelines for clean-up that are based on the intended use of the site (not currently codified). Guidelines should give priority to community needs, environmental and public health concerns, and provide regulatory certainty and protection from litigation when environmental mitigation and other conditions have been met;
 - Establish a timely approval process related to brownfield remediation;
 - Provide financial and technical assistance to local jurisdictions and private/non-profit developers for site assessment and inventory development;
 - Improve implementation of requirements to eliminate duplication in oversight authority for brownfield between the Department of Toxic Substances Control (DTSC) and the State Water Resources Control Board (SWRCB). Improve the process for determining a lead agency in order to eliminate inefficiencies that result from fragmentation;
 - Clarify the roles of state and local agencies in brownfield redevelopment, and assure that agencies have (or retain) the appropriate technical expertise, including access to toxicologists and public participation specialists when overseeing brownfield remediation;
 - Provide fiscal and regulatory incentives to communities, local governments, and developers to clean-up contaminated sites. Incentives should not lead to less protective clean-up standards, but could consider flexibility in restrictions on end land use; and
 - Ensure compliance with current disclosure requirements for brownfield sites.

Program Enforcement

In this context, Program Enforcement refers to the activities undertaken to ensure that regulated facilities, sites, entities, and/or users comply with the requirements that apply to them, including agency response to complaints from members of the public.

- Develop criteria for identifying and addressing EJ gaps in equal application of environmental enforcement efforts.
- Identify opportunities to use enforcement as a means to deliver the benefits of environmental protections to all communities.
- Review the frequency of routine inspections to ensure that inspections are timely and equitable.
- Ensure adequate and fair deployment of enforcement resources
- Track, evaluate, and when necessary, remedy potential race-related or income-related discrepancies in the enforcement of environmental programs.
- Adopt progressively more punitive measures against permit holders who repeatedly violate environmental laws or regulations.
- Provide periodic reports on inspections completed.
- Establish a complaint resolution protocol for each Cal/EPA BDO, including accessibility of complaint lines, language barriers, timeliness of response, investigation procedures, and feedback to the complainant.
- Provide periodic reports on complaints received and outcomes.
- Establish an auditing process to ensure the complaint response process is effective.

Goal #3: Improve research and data collection to promote and address environmental justice related to the health and environment of communities of color and low-income populations.

The Committee heard significant comment from the public about the lack of available information regarding a wide range of issues of concern. In general, Cal EPA is mandated to improve research and data collection for all of its programs, in order to ensure environmental protection for all Californians. The knowledge gained through this effort will support environmental justice efforts. The Committee recognizes, however, that more information is needed that specifically addresses the health and environment of communities of color and low-income populations if the goal of environmental justice is to be ensured. In addition, community members need to have greater involvement in the research process if the data are to be meaningful and useful.

The criteria that distinguish programs for research and data collection that have successfully integrated environmental justice objectives include:

- ☐ Systematic identification of data needs inside and outside of the agency, and prioritizing research objectives, including specifically articulated data objectives related to community-specific health, environmental and socio-economic indicators.
- ☐ Regular consideration of the outcomes of previous and ongoing projects that assess(ed) community-specific health, environmental, and socio-economic factors, in order to identify data limitations (such as lack, availability, quality, and/or format of data) that materially hindered the success of the project.
- ☐ Regular consultation with community groups and other interested parties to identify their data needs, interest in participation in data collection efforts, and concerns about data use, availability, and privacy.
- ☐ Consistent efforts to optimize and leverage research funding and other resources, including evaluation of single media or other focused research efforts to determine if a small addition of resources will allow the data gathered meet multiple objectives.
- ☐ Consideration of a wide range of data sources, and efforts to further develop/enhance these sources, with specific consideration of research efforts designed and implemented within the community.
- ☐ Periodic evaluation of program objectives, project grants, and data outcomes to ensure fair and equitable research, and that the needs, concerns, or specific factors affecting low-income populations and communities of color are not overlooked.
- ☐ Systematic process for compiling, indexing, and sharing existing data, within the agency and with outside stakeholders.
- ☐ Clear descriptions and explanations of research and data caveats, assumptions, and limitations.

There are also indicators that a research and data collection program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. The following may indicate research programs that have less successfully addressed environmental justice concerns:

- Reliance solely upon self-reported pollution emissions/discharges and permit compliance data.

- Lack of data on pollution sources, exposures, and contaminant-related disease outcomes.
- Reductions or limitations in funding for data gathering and the dissemination of data and research results.
- Lack of coherent, integrated research and data collection plan.
- Lack of data specific to low-income communities and communities of color, and the absence of data objectives in these areas.
- Complaints from communities and other stakeholders regarding bias in research funding, objectives, or project design, data collection or reporting, or in conclusions based on research undertaken.
- Complaints from communities and other stakeholders regarding access to data.

In order to facilitate review and discussion of the Committee's recommendations to address Goal #3, the Committee has grouped the recommendations into three broad categories. The categories are: (a) Data Collection, (b) Data Availability, and (c) Community-based Research.

Data Collection

These recommendations focus on ways to augment existing data, in order to better address environmental justice issues.

- In order to identify and address gaps in research and data collection, Cal/EPA should prepare a research plan for the entire agency. This plan should highlight projects that benefit multiple media and/or programs, and support leveraging and prioritizing of limited resources. Projects related to environmental justice should be given high priority. The plan should be updated annually.
- Cal/EPA should collect and validate data identifying sources, types, and quantities of pollution in California.
- Cal/EPA should also establish a clearinghouse, available on the web, for information associated with environmental justice.
- Develop, promote and support efforts to collect community and environmental data (including data on and surrounding federal facilities) that will improve understanding of environmental justice problems, and lead to solutions and prevention of further problems.
- Consult with and provide greater involvement to community members and other stakeholders prior to designing studies of the community.
- Collect and analyze data on the public health and ecological impacts of all environmental contaminants, including a complete and accurate list of toxic air contaminants.
- Support research into new or alternative means to reduce pollution and protect the environment.
- Support research into cumulative impacts from multiples sources of pollution, and through multiple media.
- Support research that includes bio-monitoring to help assess individual body-burdens for environmental contaminants.
- Support research that enhances data on the impacts of environmental contaminants on children, the elderly, and other vulnerable populations, including parameters to assess variables such as income and race.

- Collect data to support GIS-based, multi-media analysis of pollution sources, the places where people live and work, and the demographics of the people in those locations.
- Assess cultural impacts, and the development of more complete databases on affected cultural issues (such as sacred sites, subsistence fishing, language barriers, etc.).
- Enhance systems for consistent environmental data collection and application to ensure applicability of data to environmental justice issues.

Data Availability

The Committee heard many complaints that when research had been done, or data was thought to exist, it was not available to those who had need of it. These recommendations are meant to enhance the availability of data, and to recognize and respect the needs of community members who agree to participate in research efforts.

- Make data collected by the agency about communities available promptly to the communities it was collected from, and other stakeholders, without violating basic privacy rights (for example by releasing an individual's medical data to others).
- Make data availability to the participating community members and other stakeholders a condition of funding external research projects, where possible, but ensure individual privacy is respected especially with data relating to the individual health of a community member.
- Establish mechanisms to prevent abuse of data collected from communities.
- Promote collaborative efforts between federal, state, and local agencies towards sharing of data and information relevant to environmental justice.

Community-based Research

Community-based research is used here to describe research efforts where the community (rather than government) plays a lead role in designing, implementing, and analyzing the results of the study.

- Establish greater respect for the knowledge base within the community.
- Explore mechanisms to address concerns about data integrity, chain of custody, bias, etc., to enhance general acceptance of community-based research.
- Establish mechanisms to support community-based research projects (e.g., grants, loans, technical assistance, or collaboration), consistent with Assembly Bill 2312.

Goal #4: *Ensure effective cross-media coordination and accountability in addressing environmental justice issues.*

Programs that have successfully integrated environmental justice goals across environmental media, and embody a sufficient degree of accountability are distinguished by the following criteria:

- Development, implementation, and regular evaluation of environmental justice policies, goals, and objectives.
- Use of environmental justice work plans with specific, measurable, and time-bound action items.
- Clearly articulated objectives and mechanisms to ensure that media-specific policies, goals, objectives, and action items relate logically to those for other media, including coordinated development and implementation, resource leveraging, and mutual accountability.
- Commitment of funding and other resources needed to implement environmental justice policies, goals, objectives, and action items.
- Periodic progress reports to agency management and external stakeholders, including communities, on program implementation.
- Active solicitation of program evaluation (successes and failures) by external stakeholders, including equal participation of communities, and establish mechanisms to adjust programs based on input received.

There are also indicators that a cross media coordination and accountability program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. The following warning signs may indicate programs that have less successfully integrated environmental justice goals across environmental media, or lack mechanisms for accountability:

- Redundant or conflicting program elements.
- Lack of awareness of related activities within separate media programs.
- Expenditure of resources duplicating efforts of other agencies or entities.
- Complaints from external stakeholders, including communities, that agency efforts are biased, fail to address environmental justice issues, or repeat past failures in spite of stakeholder input.

In order to facilitate review and discussion of the Committee's recommendations to address Goal #4, the Committee has grouped the recommendations into two broad categories. The categories are: (a) Cross-Media Coordination, and (b) Agency Accountability.

Cross-media Coordination

Coordination between media (such as air, water, waste, etc.) is an important aspect of Cal/EPA's overall function as an agency. These recommendations are intended to improve cross-media coordination and better support environmental justice efforts.

- Develop protocols for effective coordination within Cal/EPA, its Boards, Departments, and Office, including regional offices, on environmental justice issues.
- Examine mechanisms to ensure greater coordination with federal state and local agencies.
- Explore opportunities to develop environmental justice projects that can function as models for collaborative approaches on environmental justice issues (similar to projects supported by U.S. EPA in their National Environmental Justice Action Agenda).

Agency Accountability

Accountability is a critical part of effective implementation of any strategy. It was also identified by many members of the public that this is an area where improvements could be made.

- Fully consider these Advisory Committee recommendations and provide semi-annual reports from the Secretary of Cal/EPA to external stakeholders on the actions taken in response to these recommendations.
- Identify and allocate appropriate resources to carry out activities by Cal/EPA Boards, Departments and Office (BDOs) to address environmental justice issues.
- Develop performance measures to determine the success of environmental justice programs with review and input from external stakeholders.
- Promote periodic performance reports from Cal/EPA Boards, Departments, and Office (BDOs), including regional offices, to external stakeholders.
- Ensure ongoing communication between Cal/EPA and external stakeholders.
- Clarify roles and responsibilities of federal, state, local, and (where applicable) tribal or Mexican governments/agencies with regard to environmental justice issues within the community.
- Ensure compliance with federal (Title VI of the Civil Rights Act of 1964) and state (California Government Code Section 11135) civil rights laws in making environmental decisions.

VI. IMPLEMENTATION OF RECOMMENDATIONS

The EJ Advisory Committee believes that additional direction to the Secretary of Cal/EPA and its Boards, Departments, and Office is important to ensure full and effective implementation of the Committee's recommendations. As the Committee was discussing and drafting its recommendations, Committee members underscored the central concept that some of its recommendations require additional data or tools before they can be fully implemented, but others can and should be undertaken without delay. After the Committee finalizes its recommendations, the Committee intends to prioritize those recommendations, and where possible, establish timelines and articulate whom it feels should be responsible for carrying out the recommendations and reporting back to stakeholders. Members of the public are encouraged to comment on their implementation priorities, and make recommendations to the Committee about how to approach this task.

VII. RECOMMENDATIONS FOR FUTURE EVALUATION

The EJ Advisory Committee identified areas of government action that are not, either directly or indirectly, under the purview of Cal/EPA or the Interagency Working Group, but have significant impact on the ultimate realization of environmental justice in California. In particular, these include decision-making about transportation infrastructure, health services, federal actions, and decisions affecting Native American tribes. Each of these areas, as well as others not listed here, deserves careful consideration and recommendations for implementing programs to achieve the goal of environmental justice. Members of the public are encouraged to comment on the importance of considering recommendations for environmental justice for these or other areas of government, and how, or by whom, the recommendations should be made.

VIII. ALTERNATIVE OPINION(S) (“Minority Reports” From Committee Member(s))

*Alternative View to the
Draft Cal/EPA Environmental Justice Advisory Committee on Environmental Justice
Recommendations Related to Mandates for Use of Alternative Chemicals, Products or
Processes, and Cumulative Impacts/Cumulative Pollution Burden (July 2003 Version)*

Prepared by
Committee Member Cindy Tuck, General Counsel
California Council for Environmental and Economic Balance (“CCEEB”)
July 11, 2003

1. Background regarding this “Alternative View” and CCEEB

The Cal/EPA Environmental Justice Advisory Committee (the “Committee”) plans on meeting in late September of 2003 to discuss input from the public during the 60-day public review period, to hear additional public comments, and to finalize this draft recommendations report. To the credit of all of the Committee Members, the Committee has reached consensus on a large number of the report’s draft recommendations. I will continue to work with the Committee to reach consensus on the remaining non-consensus issues. I have written this relatively short “alternative view” at this time to be responsive to Cal/EPA’s request that Committee Members who might prepare a minority report/alternative opinion to the final report prepare an initial document at this time for the public review process. If I do need to write an actual minority report/alternative opinion on the final version of the report, that document would be more detailed and might cover fewer or more issues depending on the content of the Committee’s final report (e.g., based on resolved issues).

The Committee presents its recommendations in Section V. of this draft report. The Committee has structured its recommendations around four key goals. It is important to note that the Committee has reached consensus on the recommendations that fall under Goal 1 (ensuring meaningful public participation and promoting community capacity building), Goal 3 (improving research and data collection to address environmental justice), and Goal 4 (ensuring effective cross-media coordination and agency accountability). I have voted for inclusion of these three goal sections in the draft report.

Goal 2 under Section V addresses integrating environmental justice into the development, adoption, implementation, and enforcement of environmental laws, regulations and policies. CCEEB agrees with the stated goal and some of the draft recommendations under that goal. However, as explained below, CCEEB has significant concerns with some of the draft recommendations that are included in the draft report under Goal 2. These are the recommendations on which the Committee has not reached consensus.

This alternative view presents the views of the California Council for Environmental and Economic Balance (“CCEEB”), which I represent at the Committee. CCEEB is a nonprofit, nonpartisan coalition of business, labor and public leaders that works to advance policies that

protect public health and the environment while also allowing for continued economic growth. As shown by our past actions, CCEEB has a long-term commitment to the creation of effective and equitable environmental justice policies.

2. Issue Areas Where CCEEB has Significant Concerns regarding the Committee's Draft Recommendations

A. Mandates for Use of Alternative Chemicals, Products or Processes

The Goal 2 text in Section V. of the draft report includes multiple recommendations that would recommend that pollution prevention should be implemented via agency-mandated pollution prevention measures such as chemical/product/process substitution. For example, in the Risk Reduction and Pollution Prevention section under Goal 2, one draft recommendation is to “require adoption of non/less toxic alternatives through a comprehensive alternatives assessment process that includes evaluation of technical feasibility and cost, and allows a reasonable transition period.” CCEEB recognizes the importance of pollution prevention programs. CCEEB also appreciates the Committee's appreciation that technical feasibility and cost are important factors in the selection of chemicals, products and processes. CCEEB's reason for opposing the recommendations for mandates in this area is that environmental regulators, including Cal/EPA's Boards, Departments and Office (“BDOs”), set emission/discharge-related environmental standards – and they have the qualifications and expertise to develop those standards. Environmental regulators are not trained in product/process design or manufacturing. Environmental regulators are not responsible for product performance, product safety, product warranties or product liability. Government should set and enforce the limits on emissions, discharges or risk from a facility as opposed to mandating which chemicals, products or processes the company may use to meet the limits.

In suggested mock-ups, CCEEB has suggested language to the Committee that would recommend: 1) research regarding alternatives products and processes; 2) education of municipalities and businesses regarding those alternatives; and 3) incentives for municipalities and businesses to use those alternatives. CCEEB has also supported risk reduction strategies where the agency identifies the required level of risk reduction and the business determines internally how to meet that required level of risk reduction by evaluating various options such as pollution prevention.

One of the Committee's draft recommendations in this area is for Cal/EPA to officially recognize that “it is not always necessary or appropriate to wait for actual, or measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm.” This language is so similar in drafting to the Precautionary Principle (i.e., the Wingspread definition: “When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically (...)”) that CCEEB has recommended and continues to recommend the deletion of this draft recommendation. This is because we are concerned that this concept could be misused and extended to prevent an activity of virtually any type involving chemicals. CCEEB has supported the Committee's draft recommendations that: 1) it is important for Cal/EPA to officially recognize the importance of precaution; and 2) that it is appropriate for

each BDO to identify where they currently use a precautionary approach and to evaluate whether additional precaution is needed.

B. Regulation to Address Cumulative Impacts/Cumulative Pollution Burden before Science-Based Tools are Available

CCEEB agrees with the Committee that cumulative impacts is an important environmental justice issue. CCEEB has supported the recommendation in the Risk Reduction and Pollution Prevention section under Goal 2 that would recommend that Cal/EPA “develop, through a public process, peer-reviewed tools to assess cumulative impacts, and equitable, scientifically-based criteria for using these tools – especially as they may be used to further the goals of environmental justice.” CCEEB’s concern is that the text of Goal 2 includes several recommendations that would suggest that Cal/EPA and other agencies should move forward with rather severe measures before valid tools are available to assess cumulative risk. Examples of some of the suggested measures include buffer zones, small facility relocation and permit denial. Without science-based tools and criteria for the use of these tools, such measures could be imposed arbitrarily and could result in the loss of jobs and a failure to address the true environmental risks. This is not a sound basis for environmental regulation. The agencies need to have valid tools to evaluate cumulative exposures and risk and an understanding of the causes and contributors to the cumulative exposures and risk before moving forward with such measures.

As another example, one series of draft recommendations in the Risk Reduction and Pollution Prevention section under Goal 2 would recommend regulation based on an assessment of “cumulative pollution burden” (in which air quality, water quality, hazardous materials storage and other environmental issues would somehow be combined) based simply on existing right-to-know information. CCEEB believes that regulation of cumulative risk or exposure needs to be based on science-based tools and equitable and science-based implementation criteria. Moving ahead with a combined pollution burden assessment is premature when key tools are not yet developed for individual media (for example, the Air Resources Board is currently developing tools for assessing cumulative risk due to toxic air pollutants).

3. Suggested Changes to the Committee’s Draft Report

CCEEB will review the new (July) version of the draft report, including language which is new from the June Committee meeting (e.g., the mobile source language under Goal 2) and work to develop updated suggested changes to the draft report in advance of the Committee’s next meeting that could aid the Committee in reaching consensus on the remaining issues. Those suggested changes will in large part address the issues summarized above, but they will also address other issues (e.g., CCEEB would suggest that where it is necessary to adopt stricter controls to reduce pollution and health risks, the environmental agencies should adopt those controls as opposed to local governments adopting those controls during land use planning, as currently proposed under Goal 2).

4. Closing

In closing, I appreciate the Committee’s and public’s time in considering CCEEB’s views.

IX. BACKGROUND MATERIALS AND REFERENCES

The following materials in the appendices were prepared by Cal/EPA staff at the request of the EJ Advisory Committee. The Committee has not formally reviewed or discussed the materials, however, and may recommend changes to them once a formal review is completed. Members of the public are encouraged to review and comment on the materials, especially in regard to their accuracy, completeness, and usefulness.

- Appendix A:** Detailed History of Environmental Justice
- Appendix B:** White, Harvey L. 1998. "Race, Class, and Environmental Hazards" in Camacho, David E. (ed), *Environmental Injustices, Political Struggles: Race, Class, and the Environment*. pp. 61-81. Duke University Press: Durham
- Appendix C:** President Clinton's Executive Order 12898: "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" – February 1994
- Appendix D:** *Environmental Justice and Tribes* – Prepared by Committee Member Dorothy Hallock, Fort Mojave Indian Tribe
- Appendix E:** Overview of California State Law on Environmental Justice
- Appendix F:** Cal/EPA Boards, Departments, and Office (BDO) Organizational Chart
- Appendix G:** Cal/EPA Interagency Working Group on Environmental Justice
- Appendix H:** Summary of Public Participation & Comments Received in drafting the Committee's Recommendations
- Appendix I:** Precautionary Principle Background Materials